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CAUSE NO. A - 812

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

HARRY GRAHAM AND ELLEN GRAHAM

PETITIONERS

VS.

STATE OF INDIANA

RESPONDENT

ON APPEAL FROM THE SUPREME COURT OF INDIANA; ON WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

APPEARING pro se

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I

QUESTIONS PRESENTED FOR REVIEW

Comes now Harry Graham pro se and Ellen Graham pro se in the above captioned cause, and respectfully petition this Most Honorable Court to review the judgments in this cause by means of the Writ of Certiorari.

Questions:

1. Was the Indiana Medical Licensing Law unconstitutional I.C. 25.22. Which defines the practice of medicine and was used to convict the petitioners on all three charges?

I. Involuntary Manslaughter, I.C. 35-42-1-4 (1), (3)

II. Reckless Homicide, I.C. 35-42-1-5

III. Practice of medicine without a license I.C. 25-22.5

2. Was the search warrant unconstitutional that was used for searching the petitioners' premises and seizing their pro-

perty on September 30, 1983?

3. Was petitioners' counsel's use of the word "Variance" sufficient to reject the evidence?

4. Was it lawful for blatantly prejudicial evidence to be admitted when it was plain error?

5. Was "Involuntary Manslaughter" and "Reckless Homicide" Constitutionally defined by Honorable Robert Barnett, the trial court judge?

6. Why should not Ellen Graham have been exonerated for all her acts because of the exception in the Indiana Medical Licensing Law for Registered Nurses and the duties assigned to nurses and permitted to nurses under the Indiana Nurse Licensing Law?

7. Were the religious "First Amendment" Rights of the petitioners violated in this cause?

8. Were other common law and constitutional Rights of the petitioners violated?

9. Were the petitioners subjected to "Double Jeopardy"?

10. Should an autopsy have been performed upon Sybil Bennett?

11. Does the Medical Licensing Law I.C. 25-22.5 violate the "Sherman Anti-Trust Act"?

12. Would any or all of the above reasons be sufficient to reverse the decisions of the lower courts?

II

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGEMENT IS SOUGHT TO BE REVIEWED:

1. Honorable Robert Barnett, Judge of Superior Court No. 1, Delaware County, Indiana.
2. Honorable J. Neal, Justice, Indiana Court of Appeals No. 1.
3. Honorable J. Robertson, Justice, Indiana Court of Appeals No.1.
4. Honorable P.J. Ratliff, Justice, Indiana Court of Appeals No. 1.
5. Honorable Richard M. Givan, Chief Justice, Indiana Supreme Court.
6. Honorable Roger O. DeBruler, Justice, Indiana Supreme Court.
7. Honorable Alfred J. Pavarnik, Justice, Indiana Supreme Court.
8. Honorable Dixon W. Prentice, Justice, Indiana Supreme Court.

9. Honorable Randall Shepard, Justice,
Indiana Supreme Ccurt.

10. Michael Alexander
Prosecuting Attorney
Delaware County, Indiana

11. Linley Pearson
Attorney General
State of Indiana
State House
Indianapolis, Indiana

12. Governor Robert D. Orr
State of Indiana
State House
Indianapolis, Indiana

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AUTHORS

E.G. White.	41,42

III

OPINIONS DELIVERED BY THE COURTS

The petitioners were convicted on 3 counts by the Superior Court No. 1 of Delaware County, Indiana. Count No. 1 - Involuntary Manslaughter I.C. 35-42-1-4; Count No. 2 - Reckless Homicide I.C 35-42-1-5; and Count No. 3 - Unlawful Practice of Medicine I.C. 25-22.5-8-1.

IV

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

A. Cause A-812 United States Supreme Court, time extension ordered to and including May 28, 1986, by Justice Stevens. See appendix.

B. February 27, 1986, is the date of the "Refusal to Hear" of the Supreme Court of Indiana.

C. There was no "Rehearing" after the "Refusal to Hear". A "Rehearing" is

not permitted by Indiana Rule 11-B-8.

D. There is no other Court to which this cause can be appealed beyond the Indiana Supreme Court; therefore, this Court is the Court of Last Resort and does in fact have jurisdiction. See "Rules of the Supreme Court of the United States" Rule 17-1-(b). Appellate Rule 11-B-8.

V

CONSTITUTIONAL PROVISIONS - AMENDMENTS, STATUTES, ORDINANCES AND REGULATIONS WHICH THIS CASE INVOLVES.

Amendment - I:

> "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of Speech, or of the Press;"

Amendment - IV:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describ-

ing the place to be searched, and the person or things to be seized."

Amendment V:

"...Nor shall any persons be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without Due Process of Law:"

Amendment VI:

"This constitution, and the laws of the United States which shall be made in pursuance thereof; ...shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Amendment IX:

"The enumeration of the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment XIV:

"...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without Due Process of Law; nor deny to any person within its jurisdiction the

equal protection of the laws."

VI

CONCISE STATEMENT OF THE CASE

Sybil Bennett had a problem breathing most of her married life. She went to a Doctor Van Ness who apparently did not find the cause of her problem. Since she was 47 years of age, he gave her a hormone injection which aggravated her problem. This was June 2, 1983. On her way home, she feared having an auto accident so she stopped at the appellants' place of business.

Ellen Graham was a Registered Nurse, licensed in the State of Indiana, and had been director of a school of nursing for several years. Harry Graham had been a Medical Doctor's chief assistant in the Army for four (4) years.

Petitioners Harry Graham and Ellen Graham are members of the same local Seventh-Day Adventist Church where deceased Sybil Bennett was a member. They were all adults of

sound mind and had the same religious convictions regarding maintaining and regaining health through natural methods as opposed to using poisonous drugs. These petitioners consented to Sybil's request to come into their house until she felt better. They helped her with a 'Home Nursing' type of program for six (6) weeks, at which time Sybil showed Ellen a Large ulcer on her breast. The petitioners assisted in making an appointment with an Osteopathic Doctor Goldberg across the State line in Dayton, Ohio.

Sybil's husband, Jack Bennett, furnished the car and took Sybil to the doctor. Harry went along. The ulcer was diagnosed as cancer. Dr. Goldberg filled out all federal documents necessary to prescribe and obtain laetrile legally and supplied a dietary program. Sybil was not able to get more than small quantities of of food or juice into her stomach at a

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time, so the petitioners attempted to supplement her nutrition with cup-full quantities of juices in the form of enemas. Cleansing enemas were also given. Sybil expressed her appreciation for the religious atmosphere at the petitioners' house. When Sybil Bennett first cam to the petitioners, she was employed by a dental clinic. Even so, her chewing teeth were rotted and/or worn down to the gums. Realizing the hazards of abscessed teeth, the Grahams persuaded Sybil to go to a dentist to get them cared for.

At the first trip to the dental surgeon, four (4) teeth were pulled from one side of the upper jaw. One week later, four (4) teeth were pulled from the other side of the upper jaw. Sybil's husband, Jack, was complaining about driving over 100 miles to the dental surgeon. At the third appointment - one week after the second appointment - in her weakened condition, she was

given three (3) injections of anesthetic. Three (3) teeth were pulled from one side of the lower jaw, two (2) teeth were pulled from the front; and two (2) teeth were pulled from the other side, all from the lower jaw. Abscesses do not drain well from the lower jaw. That much absorption of drainage, plus three (3) doses of Novocaine on top of the serious cancer, in her weakened condition, was more than her body could handle. Sybil worsened rapidly. She was taken to a local hospital August 24, 1983. She died in the hospital September 11, 1983, without the Grahams seeing her in the intervening period. There was no autopsy performed. September 30, 1983, the petitioners' property was searched. Some areas were searched that were not on the search warrant. Over $10,000.00 worth of items and money were confiscated.

October 17, 1983, the petitioners were arrested and held in the Delaware County

jail on $50,000.00 bond each. They were released on a property bond October 31, 1983. The petitioners were charged, tried, and convicted on three (3) counts:

Count I - Involuntary Manslaughter

Count II - Reckless Homicide

Count III - Unlawful Practice of Medicine.

The petitioners, Harry Graham and Ellen Graham, were each sentenced to three (3) years plus $5,000.00 on Count II plus three (3) years on Count III to run concurrently. Count I was dropped. This cause was appealed to the Indiana Court of Appeals No. 1 and lost August 10, 1985. The request to the Indiana Supreme Court to hear this cause was refused February 27, 1986. The petitioners owe their attorney $27,750.00. He has withdrawn as their attorney. Petitioners are now appealing pro se to this Court in quest of justice.

The grounds upon which the jurisdiction of this Court are sought in this cause are:

(a) Date and Time of Order extending time to file. On April 23, 1986, there was an order issued by Honorable John Paul Stevens granting an extension of time to this cause No. A-812 for filing a "Petition for Writ of Certiorari" to and including May 28, 1986.

(b) The date of the decision of the Supreme Court of the State of Indiana when it refused to hear the transfer of this cause, when it was recorded, is February 27, 1986. See appended order.

(c) There was no rehearing after the 'Refusal to Hear.' Appellate Rule 11-B-(8) 'No petition for rehearing will be permitted to be filed upon denial of a petition to transfer.'

(d) STATUTORY PROVISIONS - This Court is the Court of Last Resort. There is no other Court where petitioners can go to from the Supreme Court of the State of Indiana. vs 28 ss 1257.1 (3)

ISSUES RAISED:

1. The Constitutionality of the Indiana Medical Licensing Law: I.C. 25-22.5-1-1.1 (a). See appendix. The definition of the practice of medicine was raised at the following times and other times.

(a) "Brief for transfer" pages 1, 4-6

(b) "Brief for rehearing" pages 1, 3

(c) "Petition for rehearing" pages 4(a)

(d) Appellate Court's "Decision Document" pages 4, 10

(e) "Appellant brief" page 13

(f) Correction of errors - memorandum, page 5

(g) R. 591-604, 304-308, 373, 374. The law was upheld in all three counts.

2. That the search warrant was unconstitutional. See appendix.

(a) "Brief of transfer" pages 1,2

(b) Court of Appeals "Decision Document" pages 4, 5, 6

(c) "Brief for rehearing" pages 1, 2

(d) "Petition for rehearing" page 4-(b)

(e) "Appeals brief" pages 8, 9, 11, 12

(f) "Motion to correct errors", memorandum, pages 1, 2, 4, 5-7

(g) R. 257-262, 300

The Search Warrant was upheld in all three courts.

3. That the Court of Appeals' Opinion contravenes ruling precedent of the Indiana Supreme Court. See appendix.

(a) Appellants' petition for transfer pages 1, 2, 8-9

(b) Brief in support of rehearing pages 1-2, 8-9

(c) Court of Appeals "Decision Document" pages 17-20

(d) Appeal Brief of appellants pages 44-50

(e) Defendants' objections to jury instructions pages 1-4

Objections were overruled.

4. Prejudicial evidence should not have been admitted in court. See appendix.

(a) "Brief of transfer" pages 3, 4, 10

(b) "Rehearing brief" pages 2, 8

(c) "Petition for rehearing" page 4. (c) (d)

(d) Court of Appeals "Decision Document" 5, 19

(e) "Appellants' brief" pages 1, 44-50

(f) "Correction of errors" pages 5-11 "Correction of errors" memorandum pages 8, 9

(g) R. 260-263, 300, 301

The use of this prejudicial evidence was permitted by Honorable Robert Barnett, Justice of the Delaware County Superior Court No. 1, and was upheld by the Indiana Court of Appeals No. 1 and the Indiana Supreme Court.

5. Wrong definitions of "Reckless Homicide". See appendix.

(a) "Transfer brief" pages 2, 10

(b) "Rehearing motion" pages 4, 9

(c) "Petition for rehearing" page 4 (e)

(d) Court of Appeals "Decision Document" page 4, 10

(e) "Appeals brief" pages 12, 29

(f) "Correction of errors" page 1; memorandum, pages 1, 12-13

(g) "Brief Narrative of Evidence" page 4

(h) R. 57, 175, 177, 178, 179, 215, 304, 309, 310, 313, 314, 315, 426

The new definition of reckless homicide and involuntary manslaughter by Honorable Robert Barnett, Justice of the Delaware County Superior Court No. 1 was upheld by the Indiana Court of Appeals No. 1 and the Indiana Supreme Court.

5. Refusal of Nursing License Defense. See appendix.

(a) "Transfer brief" pages 2, 11, 12

(b) "Rehearing brief" pages 2, 10

(c) "Petition for rehearing" page 4 (f)

(d) Court of Appeals "Decision Docu-

ment" pages 4, 10

(e) "Appeals brief" pages 1, 13, 33

(f) "Correction of errors" pages 4, 11

"Correction of errors" memorandum pages 7-8

(g) "Original Court" (R) 307, 333, 346 347, 350, 373, 393, 510, 591, 342, 604, 158, 179, 185, 186, 306

(h) "Brief Narrative of Evidence" pages 1, 5, 6

The Nursing License defense was denied by the trial court and the denial was upheld by the Court of Appeals and the Indiana Supreme Court.

7. Religious Rights Violated. See appendix.

(a) Court of Appeals "Decision Document" page 2

(b) "Appeals brief" page 4

(c) "Motion to Correct Errors"

Page 12 "Motion to Correct Errors" memorandum, page 7, 8

(d) "Brief Narrative of Evidence" pages 1, 5

(e) (R) 40, 41, 122, 132, 133, 135, 399, 553, 554, 562, 563, 568, 569.

The Religious defense was rejected by the trial court and by the Appeals Court and by the Indiana Supreme Court.

8. Basic Constitutional, pre-Constitutional and Common Law rights were violated. See appendix copy of the "Declaration of Independence", "Amendments to the Constitution of the United States" and Article I of the Constitution of Indiana.

(a) "Life, Liberty and the pursuit of Happiness;" see Declaration of Independence; also, State of Indiana Constitution, Article No. 1.

(b) Other rights. Petitioners were not protected by these. R. 54, 55, 60-64-70, 118, 119, 153, 166, 169-176, 180, 185, 187, 188, 206, 306, 307, 309.

9. Double jeopardy should reverse the

conviction of the petitioners. Both petitioners were charged, tried, and convicted of "Involuntary Manslaughter", "Reckless Homicide", and "Unlawful Practice of Medicine", all for the same acts on the same person. See appendix - Jury Instructions Nos. 4-9.

10. No autopsy was performed to verify evidence of true cause of death. The Delaware County Coroner participated in the search of the petitioners' premises, but there was no autopsy performed. See appendix. (R.-187). 185, 186, 199

JUDGMENTS SOUGHT TO BE REVIEWED:

Petitioners respectfully request this Most Honorable Court to review the following decisions.

1. Refusal of the Indiana Supreme Court to hear petitioners' appeals. See appendix - "Refusal to Hear".

2. Appeal from the Delaware Superior Court No. 1 to the Appeals Court No.1 of

Indiana. See appendix - "Decision Document" page 22. "The trial court is in all things confirmed."

3. All points wherein the Delaware County Superior Court No. 1 convicted the petitioners.

VII

ARGUMENT

Issue No. 1

That the opinion of the Court of Appeals erroneously decides a new question of law. And that it was upheld by the Indiana Supreme Court by its denial to review. The Indiana Code Section 25-22.5-1.1 (a) (Burns 1982) defines the practice of medicine as:

> (a) "Holding oneself out to the public as being engaged in the diagnosis, treatment, correction or prevention of any disease, ailment, defect, injury, infirmity, deformity, pain or other condition of human beings, or the suggestion, recommendation or prescription or administration of any form of treatment, without limitation, or the performing of any kind of surgical operation upon a human being, including tattooing, or the penetration of the skin or body orifice by any means, for the intended palliation, relief, cure or

prevention of any physical, mental or functional ailment or defect of any person;

(2) The maintenance of an office or place of business for the reception, examination or treatment of persons suffering from disease, ailment, defect, injury, infirmity, deformity, pain or other conditions of body or mind; or

(3) Attaching the designation 'doctor of medicine', 'M.D.', 'doctor of osteopathy', 'D.O.', osteopathic medical physician', 'physician', 'surgeon', or 'physician and surgeon', either alone or in connection with other words, or any other words or abbreviations to his name, indicating or inducing others to believe that the person is engaged in the practice of medicine or osteopathic medicine as herein defined."

As this statute has never before been constitutionally challenged, the Court of Appeals and the Indiana Supreme Court erroneously decided a new question of law when they upheld this code provision. Petitioners contend that this statute is unconstitutional in that it is so vague that men of common intelligence must necessarily guess at its meaning, and therefore, it

violates due process of law. See, Grody v. State, (1972) 257 Ind. 641, 178 N.E. 2d 280. This statute does not permit a person to differentiate between lawful and unlawful conduct, and is subject to discriminatory enforcement, thereby falling within the prohibitions of Grayned v. City of Rockford. (1972) 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222. In order to comply with due process requirements under the Fourteenth Amendment, a statute must give sufficient prior notice to those who must conform their conduct to the dictates of the law, and furthermore, must be so definite as to provide workable standards for enforcement and adjudication. Nova Records, Inc. v. Sendak, (1980) 504 F.Supp. 938, Aff'd 706 F. 2d 792. It is possible to visualize many examples of conduct which could literally be a violation of this statute, but which are logically absurd. A masseuse or masseur, for example, would

have to obtain a license to practice medicine, as well as a health food store proprietor who recommended herbs or health regimens to the public. The code provision in question is so vague that these possibilities are illogical examples of conduct that could actually be prohibited. A statute which is so vague as to reach such a variety of conduct is unconstitutional in that it does not afford notice to a person as to what conduct is prohibited, in violation of due process. INDIANA MEDICAL LICENSING LAW I.C. 25-22.5-1-.1 Was not the unconstitutionality of this law demonstrated in the Court at trial when a nurse from the Indiana Nursing Board testified in Court that she, as a registered nurse, did not dare to pick a sliver out of someone's finger without a medical doctor's order (R.603)? Also, that she, as a registered nurse, did not dare to use a tongue depressor and look at a person's throat without an order from a medical doc-

tor (R. 603). The Graham's attorney pointed out to Judge Robert Barnett that putting a baby bottle in a hungry baby's mouth would be penetrating a body orifice. Upon investigation, it would also be preventing "Mal-Nutrition", another violation. Recommending an aspirin would be a violation as would suggesting to a person that smoking cigarettes might cause lung cancer. Does this violate freedom of Speech and of the Press as related in the first Amendment to the Constitution? High levels of potassium were referred to by the prosecutor and the Appeals Court, however, investigation of Sybil Bennett's hospital records show that the potassium level was within the normal limit, albeit at the upper limit when she entered the hospital. See appendix. (Sybil's records). Five would hardly be considered a toxic level as stated in the "Decision Document" of the Appeals Court (p. 4) and upheld by the INDIANA SU-

PREME COURT. Two days after admission, more potassium was given to her. The well-defined principles researched from the high court determined:

> "..The DECISIONS which ..an individual may make without unjustified government interference..MUST MEET TWO CRITERIA. First, they must be 'PERSONAL DECISIONS'. Id. They must primarily involve one's self or one's family. SECOND, they must be 'IMPORTANT DECISIONS' .. They must profoundly affect one's development or one's LIFE..... DECISIONS relating to MEDICAL TREATMENT ... ARE, to an extraordinary degree intrinsically personal. It is the individual making the decision, and no one else, who LIVES WITH THE PAIN AND DISEASE. It is the individual making the decision, and no one else, who IF HE OR SHE SURVIVES, MUST LIVE WITH THE RESULTS OF THAT DECISION. One's HEALTH is a uniquely personal possession. The decision of how to treat that possession is of a no less personal nature. Second, it is impossible to discuss the decision to obtain or REJECT MEDICAL TREATMENT without realizing its importance. The decision can either produce or eliminate PHYSICAL, PSYCHOLOGICAL and EMOTIONAL RUIN. It can destroy one's economic stability. It is, for some, the DIFFERENCE BETWEEN a life of pain and a life of pleasure. It is, for others, the difference between LIFE and DEATH....Thus, the decision to OBTAIN or REJECT MEDICAL TREATMENT.... is both personal and important enough to be encompassed by the right of pri-

> vacy. This should come as no surprise. To begin with, the Fifth Circuit held over twenty-one years ago that 'the State cannot deny to any individual the right to exercise a REASONABLE CHOICE in the METHOD OF TREATMENT OF ILLS.'" England v. Louisiana State Board of Medical Examiners, 259 F. 2d 626, 627.

This is the primary issue of the whole cause. Sybil Bennett chose an alternative method which certainly appears to be her right. The petitioners have been thrown in jail twice for a total of 5 weeks and have spent over 2 months in the Indiana State penal system for supplying Sybil Bennett with what petitioners believe she had a right to have.

IS THIS "DUE PROCESS"?

> I.C. 25-22.5-8-4. Injunctions. The attorney general, prosecuting attorney, the board or any citizen of any county where any person engages in the practice of medicine or osteopathic medicine without a license or a permit to do so, may, according to to the laws of Indiana government injunctions, maintain an action in the name of the state of Indiana to enjoin the person from engaging in the practice of medicine or osteopathic medicine. In charging any person in

an affidavit, information or indictment, with a violation of this law by practicing medicine or osteopathic medicine without a license or permit, it is sufficient to charge that he did, upon a certain day and in a certain county, engage in the unlawful practice of medicine or osteopathic medicine and that he did not have any license or permit to do so. No further or more particular fact need be averred concerning the matter.

Issue No. 2

That the decision of the Court of Appeals and the Indiana Supreme Court in its refusal to hear Contravenes ruling precedent of the Indiana Supreme Court and the United States Supreme Court.

The Indiana Code Section 35-33-5-2 provides as follows:

"Sec. 2 (a) Except as provided in subsection (c), no warrant for search or arrest shall be issued until there is filed with the judge an affidavit, particularly describing the house or place to be searched and the things to be searched for, or particularly describing the person to be arrested, and alleging substantially the offense in relation thereto, and that the affiant believes that such things as are to be searched for are there concealed, or that the person to be arrested committed the offense, and setting forth facts then in knowledge of the affiant

> or information based on hearsay, constituting the probable cause. When based on hearsay, the affidavit must either:
>
> (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or
>
> (2) contain information that establishes that the totality of the circumstances corroborates the hearsay."

In the case at hand, there was no attempt made to establish the credibility, reliability or veracity of the informants, nor was there any attempt made to show that the totality of the circumstances corroborated the hearsay testimony given by Officer Richard McCord. No exhibits were introduced at the hearing on the Motion to Suppress and no documentation whatsoever. This differs from Illinois v. Gates, (1983) _____U.S. _____, 103 S. Ct. 2317, 76 L. Ed. 2d 527, which first established the "totality of the circumstances" test. In that case, upon receipt of an anonymous

letter, an independent investigation was conducted which verified at least some of the information contained in the letter. There was no evidence of even partial verification in the case at bar that would support the issuance of the search warrant. See, McClain v. State, (1980) Ind., 410 N.E. 2d 1297. The evidence introduced at the hearing clearly failed to meet the requirements of I.C. 35-33-5-2, and violated the requisities of both Indiana and United States Supreme Court precedent. Consequently, the Motion to Suppress and the objections made at trial to the evidence obtained under the search warrant should have been sustained.

Issue No. 3

That the Court of Appeals' opinion contravenes ruling precedent of the Indiana Supreme Court. Also that the Indiana Supreme Court reversed itself in this cause by refusing to hear.

The Court of Appeals' decision at p. 16-19 held that because Appellants' counsel used the word "variance" in describing his objection to the admission of certain irrelevant evidence, (see TR 878-879) and the definition of the word "variance" was not applicable to the objection raised, the objection was properly overruled. While the word "variance" was used by counsel, the true nature of objection was in fact made known to the Court. The evidence was not covered by the information and was irrelevant, immaterial and highly prejudicial to the Appellants. The Indiana Supreme Court has held that where the State understood the objection being made, and the grounds therefore, and that the nature of the objection was equally understood by the Court, then "when these purposes are fulfilled, the objection is adequate." See Candler v. State, (1970) 266 Ind. 440, 362 N.E. 2d 1233; and Hammer v. State, (1976) Ind. 354

N.E 2d 170. It was then error to construe counsel's objection (See TR 878-879) in such a hyper-technical manner. This is not the case of the general objection which fails to preserve a specific question for review, but rather counsel has stated in definite terms the substance of his objection, and it should have been considered on review based on its substance and not its technical form. See Bassemier v. Sartore, (1964) Ind. App., 201 N.E. 2d 285.

Issue No. 4

The Indiana Court of Appeals' decision and the decision of the Indiana Supreme Court by its refusal to hear contravenes precedent of the Indiana Supreme Court.

The Court of Appeals at p. 19-20 of its opinion held that testimony and photographic evidence which depicted the condition of the Hoosier Health House on September 30, 1983, more than one month after Sybil Bennett was last present at the Ap-

pellants' establishment was admissable. Appellants would argue that under the doctrine of fundamental error, if the error plainly appears on the face of the record, and is so prejudicial that it deprived the defendants of fundamental due process, then the reviewing court should address the issue. See Rowley v. State, (1982) Ind. 442 N.E 2d 343. Furthermore, the doctrine applies equally to the admission or exclusion of evidence. See Moore v. State, (1982) Ind. 440 N.E. 2d 1092. Where fundamental error exists, the procedural error will be ignored and the Court will review the merits of the case. See Newton v. State, (1984) Ind. App., 460 N.E 2d 1266; and Meredith v. State, (1982) Ind. App., 439 N.E. 2d 204. It is the Petitioners' contention that the evidence admitted was so blatantly prejudicial that the Court of Appeals should have reviewed the issue, even though technically Petitioners did

not set forth in detail in their brief the exact prejudicial effect of the evidence admitted.

Issue No. 5

That the Court of Appeals' opinion fails to give a statement in writing concerning issues raised by the parties; further, it contravenes ruling precedent of the Supreme Court of Indiana and is in conflict with other and prior Indiana Court of Appeals' decisions. The Court of Appeals opinion also erroneously decides a new question of law. This was also the decision of the Indiana Supreme Court by its refusal to hear.

The Court of Appeals held that Petitioners' objections to certain instructions were waived due to insufficient specificity. But this issue of waiver was never raised by the State in its brief and, therefore, the court completely failed to address the substantive contentions of the litigants, that is, that certain of the

instructions given do not represent the law of Indiana as to involuntary manslaughter and reckless homicide. By affirming the instructions given the jury, the Court of Appeals is approving a completely new concept of law in the State of Indiana as to the definition of the crimes of reckless homocide and involuntary manslaughter. The concept adopted by the trial court and the Court of Appeals is a radical departure from established Indiana law. Indiana law requires that for a homicide, the defendant must have inflicted or caused to be inflicted an injury upon the victim which was a direct and proximate cause of death. See Gibbs v. State, (1981) Ind. App., 426 N.E 2d 1150; Reed v. State, (1979) 180 Ind. App. 6, 387 N.E 2d 82; State v. Kelsey, (1975) 163 Ind. App. 543, 325 N.E 2d 218. There must be an injury to the decedent which contributes mediately or immediately to his death. Miller v. State, (1975) 263

Ind. 595, 335 N.E 2d 206; Wahl v. State, (1951) 229 Ind. 521, 98 N.E 2d 671; Hicks v. State, (1938) 213 Ind. 277, 11 N.E. 2d 171. The instructions on the law given in the instant case were derived from non-authoritative precedent ranging from a 1966 California case (Instruction No. 26) to a Massachusetts case decided in 1884 (Instruction No. 23). These instructions, which include Nos. 23, 24, 25, and 26, completely ignore and radically alter the general definition of these crimes under the Indiana law.

Issue No. 6

That the Court of Appeals' opinion contravenes ruling precedent of the Indiana Sureme Court and is in conflict with other decisions of the Court of Appeals but was upheld by the Indiana Supreme Court's Refusal to hear.

A party has the right to insist that the Court instruct the jury specifically

on all legal questions necessary to enable the jury to reach a true verdict in a criminal prosecution and to have the instruction made so specific as to apply to the facts of the particular case developed by the evidence. Hendrick v. State, (1951) 229 Ind. 381, 98 N.E 2d 906; Zimmerman v. State, (1984) Ind. App., 469 N.E 2d 11. In determining if an instruction has been properly refused, the Court must ask (1) whether the instruction correctly states the law, (2) whether there is evidence in the record to support the giving of the instruction, and (3) whether the substance of the tendered instruction is covered by other instructions which are given. Davis v. State, (1976) 265 Ind. 476, 478, 335 N.E. 2d 836, 838. Furthermore, a defendant is entitled to an instruction on any defense that has some foundation in the evidence, even if the evidence is weak and inconsistent.

Harrington v. State, (1980) Ind., 413

N.E. 2d 622, trans. denied. Both Petitioners in this case relied upon the nurses' licensing statute in their defense. It was not covered by the substance of any other instruction. There was, at a bare minimum, weak evidence to support the giving of the Appellants' instruction. Ellen Graham raised the argument that at least some of her conduct - if not all - was part of a nursing regimen. She also claimed the defense of gratuitous care. One of Harry Graham's defenses was that he was acting under the direction of a licensed health care professional as defined by the statute. Furthermore, evidence was introduced that the Laetrile injections were given pursuant to the authority of Dr. Goldberg, a licensed osteopath from Ohio. Did Federal law superseed Indiana State law? The Laetrile was administered under the "Bohanan Decision," which covers all states, including Indiana. (See R. 333. 350)

The exclusion in the Indiana Medical Licensing Law I.C 25-22.5-1-2 states:

> "EXCLUSIONS": This article insofar as it relates to the unlawful or unauthorized practice of medicine or osteopathic medicine shall not apply: (K) to any nurse practicing his profession under I.C 25-23. . .
>
> I.C. 25-23-1-1 defines Registered Nurse as follows:
>
> (b) The term "registered nurse" means a person who holds a valid license pursuant to the terms of this chapter, and who bears primary responsibility and accountability for nursing practice based on specialized knowledge, judgment and skill derived from the principles of biological, physical and behavioral sciences.
>
> The registered nurse practices in the profession of nursing by the performance of those activities which include but are not limited to:
>
> (1) Identifying human responses to actual or potential health conditions;
>
> (2) Deriving a nursing diagnosis which identifies the needs of the individual and/or family;
>
> (3) Executing a nursing treatment regimen through the selection, performance and management of nursing interventions based on the nursing diagnosis; . . .
>
> (4) Administering, supervising, delegating and evaluating nursing activi-

ties; . . .

Additional text in appendix.

"Decision Document", pages 15, 16.

Did not petitioner Ellen Graham, RN, have every right to perform each and every act as a Registered Nurse of which she was charged under the Unlawful Practice of Medicine Charge? Did not petitioner Harry Graham have every right to perform each and every act under the direction of Ellen Graham, R.N., of which he was charged under the Unlawful Practice of Medicine Charge?

RELIGIOUS FIRST AMENDMENT RIGHTS.

Issue No. 7

One of the major tenets of Faith of the founders of the Seventh-Day Adventist Church was 'Natural Healing' using basic, fundamental natural methods and items such as exercise, fresh air, cleanliness, using pure water inside and outside the body and a healthful diet emphasizing fresh, raw

fruits, vegetables and nuts. It also included well-cooked grains and beans. Their first institution of consequence was the world-renowned Battle Creek Sanitarium, Battle Creek, Michigan, where these methods were used.

One of the founders was Ellen G. White who, it is believed, received many visions from God concerning many religious subjects, including health. It is believed that a healthy body assists in having a healthy mind and a healthy mind assists in having a deep insight into religion, science or other philosophical subjects. It is believed that <u>religion, life and health are inseparable parts of each other</u>.

Natural methods of healing are a part of the Seventh-Day Adventist religion and are to be practiced by the faithful members. Ellen G. White instructed the members as follows:

> "There are <u>many ways</u> of PRACTICING THE HEALING ARTS, but there is <u>ONLY</u>

ONE WAY THAT HEAVEN APPROVES. God's REMEDIES ARE THE SIMPLE AGENCIES OF NATURE that will NOT tax or DEBILITATE the system through their powerful properties. Pure AIR and WATER, CLEANLINESS, a PROPER DIET, PURITY OF LIFE, and a firm TRUST IN GOD ARE REMEDIES for the want of which thousands are dying; yet THESE REMEDIES are going out of date because their SKILLFUL USE requires WORK that the people do not appreciate. Fresh AIR, EXERCISE, pure WATER, and CLEAN, sweet PREMISES are within the reach of all with but little expense; but DRUGS are expensive, both in the outlay of means and in the EFFECT PRODUCED UPON THE SYSTEM." Testimonies for the Church Vol. 5, p. 443, Ellen G. White.

The Petitioners must explain to the Court WHY some of the Leaders and Medical Doctors in his four-and-a-half million (4,500,000) member church do NOT follow Natural Methods of Healing. As in many other denominations, there are those church members who try to follow closely the doctrines and instructions, and there are those who do NOT. The inspired counsel further states:

"DISEASE is an effort of NATURE to free the system from conditions that result from a violation of the LAWS OF HEALTH. In case of SICKNESS, THE

> CAUSE SHOULD BE ASCERTAINED. UNHEALTHFUL CONDITIONS SHOULD BE CHANGED, WRONG HABITS CORRECTED. Then NATURE IS TO BE ASSISTED in her effort to EXPEL IMPURITIES and to REESTABLISH RIGHT CONDITIONS IN THE SYSTEM. Pure AIR, SUNLIGHT, ABSTEMIOUSNESS, REST, EXERCISE, PROPER DIET, the use of WATER, TRUST IN DIVINE POWER - THESE ARE THE TRUE REMEDIES. EVERY PERSON SHOULD HAVE A KNOWLEDGE OF NATURE'S REMEDIAL AGENCIES AND HOW TO APPLY THEM." Ministry of Healing p. 127, Ellen G. White.

Indiana Constitution Article 1:

Section 2. All people shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

Section 3. No law shall, in any case whatsoever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Does not the Indiana Medical Licensing Law I.C. 25-22.5 unduly restrict the petitioners' rights as protected by the constitution of the United States in the First Amendment, concerning the 'Free exercise of religion'? And the Constitution of the

State of Indiana?

There are many people in Indiana, and elsewhere, who are anxious to testify to the benefit and efficacy of these alternate Natural methods. They have been substantially and unequivocally proven to cure, heal and restore to health, those who faithfully follow them.

> "No RIGHT is held more SACRED, or is more carefully guarded, by common law, than the RIGHT of EVERY individual to POSSESSION and CONTROL of his own person, free from ALL RESTRAINT or INTERFERENCE unless by clear and unquestionable authority of law." TERRY v. STATE OF OHIO, 88 S.Ct. 1868, 393 U.S. 1 (1968).

> "If there are TWO places for TREATMENT of a TROUBLE, the individual has a RIGHT to make his choice. . . TWO schools of medicine." HOXEY v. FISHBEIN, 83 F. Supp. 282, at 284 (1949).

Petitioners Ellen Graham and Harry Graham and also deceased Sybil Bennett were all members of the same local Seventh-Day Adventist Church; they were practicing that part of their religion dealing with health as they understood it.

Petitioners Harry and Ellen Graham conscientiously plead for their "EQUAL RIGHT to "EXERCISE" their "RELIGION" and obey their Lord and Master.

Issue No. 8

Other Constitutional Rights:

(a) The courts in this cause readily accepted the right of Sybil Bennett to choose the options supplied by the medical doctors and hospitals. They also verified the right to choose no care (R) 180. The medical licensing law I.C. 25-22.5 and the courts refused to Sybil Bennett and many others the alternatives she and they desire that fall between those two extremes by putting in jeopardy those who would supply those methods and who are qualified to use them (R-169). This right to choose alternative modes of health care was established by Andrews v. Ballard (1980) 498 F. Supp. 1046-1051. When a citizen chooses a mode of health care that is not available through

the established sources of health care that he wants, then those who can and will supply that service shall not be prevented from supplying that mode of health care. (See R 306).

> "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and Pursuit of Happiness. That to secure these rights, Governments are instituted among men". Declaration of Independence.

Indiana Constitution Article 1:

> Section 1. We Declare that all people are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are Life, Liberty, and the pursuit of Happiness; that all power is inherent in the people.

Does the "Declaration of Independence" which even preceded the Constitution of the United States guarantee LIFE to its citizens? Is it true that good Health equals good LIFE: poor Health equals poor LIFE and no Health equals no LIFE? Is it true that what affects Health affects LIFE?

Therefore, is it true that each citizen has a right to the things that he believes will improve the quality and/or length of his life?

> "Certain unalienable Rights; that among these are Life, LIBERTY . . ."

Does that Liberty give a citizen the right to choose the method of health care he desires whether approved by other citizens or not? Is that his right?

Is that right denied him if the person or persons who are willing to supply that method are prevented by law from supplying the same as in the cause of Sybil Bennett and the petitioners?

Does the United States Constitution guarantee these same rights in Amendment V?

> "Nor shall be deprived of Life, Liberty or Property without due process of law?"

Was Sybil Bennett denied her right to HAPPINESS?

> The "Unalienable(Inalienable) right to Life, Liberty and the Pursuit of HAPPINESS".

Sybil Bennett was denied the "Happiness" or pleasure or comfort of spending her last days, hours and moments in a familiar, desirable and friendly atmosphere. Instead, she was FORCED to spend that time in cold, mechanical and agonizing circumstances. She requested that she be able to leave that environment and agony even though it meant shortening her life. (R) 168-176. Quality apparently meant more to her than quantity. She was deprived of that right because of I.C 25-22.5.

Did this deprive her of her constitutional rights?

Does the Indiana Constitution also guarantee these rights?

> Indiana Constitution:
>
> Section 1. "We declare that all people are created equal; that they are endowed by their Creator with <u>certain inalienable rights</u>; that among these are LIFE, LIBERTY and the Pursuit of <u>HAPPINESS</u>; that all power is inherent in the people . . ."

Does the Indiana Medical License Law I.C.

25-22.5 violate these rights?

> I.C. 25-22.5-1-1.1 (a) (1) Holding oneself out to the public as being engaged in the diagnosis, treatment, correction or prevention of any disease, ailment, pain or other condition of human beings, or the suggestion, recommendation or prescription or administration of any form of treatment, without limitation or the performing of any kind of surgical operation upon a human being, including tattooing, or the penetration of the skin or body orifice by any means, for the intended palliation, relief, cure or prevention of any physical, mental or functional ailment or defect of any person.

Does this law deprive the citizens of Indiana of their Constitutional rights to life by depriving them of some method which they sincerely believe will give them a better quality of life and/or a longer life? Would this law jeopardize one citizen for telling another citizen that smoking cigarettes might cause lung cancer and "suggesting" that he stop? Is this law really constitutional?

(b) Was Freedom of Speech also violated by this law and by the decisions of the Supe-

rior Court, the Indiana Court of Appeals and the Indiana Supreme Court? Please note the following in the above-mentioned law: I.C. 25-22-1-1.1 (a) (1)

> ". . . the suggestion, recommendation or prescription or administration of any form or treatment, without limitation. . ."

Does this violate the Freedom of Speech Clause?

(c) Was the "Right of Contract" violated (R) 407-408 (State Exhibit No. 11)? See appendix.

(d) Was the "Sherman Anti-Trust Law" violated by the gross elimination of Competition?

Issue No. 9

DOUBLE JEOPARDY

The petitioners were each charged with 3 counts - Count I, Involuntary Manslaughter; Count II, Reckless Homicide; and Count III, Unlawful Practice of Medicine - all for the same acts. The petitioners' counsel tried to get Count I or Count II dropped, but

Honorable Judge Robert Barnett refused. There was a great amount of publicity stating all 3 charges. The petitioners were charged, tried and convicted on all three counts, all highly publicized. Since Count I and Count II are nearly the same, does that not constitute "Double Jeopardy"? At sentencing, Count I was dropped. There was only one death and only one set of acts. See Jury Instructions Nos. 4-9.

> "It is NOT NECESSARY that there be TWO PROCEEDINGS before JEOPARDY CAN ATTACH TWICE." CALLEY v. CALLAWAY, 382 F. Supp. 650 (1974).

Issue No. 10

NO AUTOPSY

The Delaware County Coroner, Mr. Glenn Scroggins, was one of the officers who executed the Search Warrant and participated in the search. He was well aware of the unusual circumstances connected with her demise. Why did he fail to perform an autopsy on Sybil Bennett? Was that not a neglect of duty and a violation of the rights

of the petitioners? See appendix - (R-187).

CONCLUSION

For all of the reasons cited above, the petitioners request this Court to consider the petitioners' cause and declare:

1. The Indiana Medical Licensing Law, I.C. 25-22.5 UNconstitutional on the following grounds:

   A. That it is vague.

   B. That it violates the "Unalienable (Inalienable, Indiana Constitution) Rights" of LIFE, LIBERTY and HAPPINESS" as stated by the "Declaration of Independence" and the "Constitution of the State of Indiana".

   C. That it violates the "Freedom of Speech and of the Press" clause of the First Amendment to the Constitution of the United States.

   D. That it violates the "Free exercise of Religion" clause of the

United States Constitution.

E. That it eliminates competition and thereby violates the "Sherman Anti-Trust Act".

F. That it violates the "Right of Contract".

2. That all convictions of the petitioners be overturned on the following grounds:

A. That the Indiana Medical Licensing Law I.C. 25-22.5 is UNconstitutional; therefore, the petitioners are not guilty.

B. That the rights to LIFE, LIBERTY and HAPPINESS of the petitioners and the deceased were violated by their convictions.

C. That the religious rights of the petitioners and the deceased were violated by their convictions.

D. That the definition of "Homicide" by Honorable Robert Barnett, that "Homicide is merely the shortening of life," is erroneous. That

the petitioners are innocent of causing injury.

E. That the Nursing Exclusion in I.C. 25-22.5-1-2 (K) totally protected petitioner Ellen Graham, R.N., and partially or totally protected petitioner Harry Graham. See I.C. 25-23-1-1-(b)-(4).

> "The registered nurse practices in the profession of nursing by ...administering, supervising, delegating and evaluating nursing activities."

F. That the Search Warrant was defective and whereas areas were searched outside the bounds of the search warrant, the petitioners should be declared innocent.

G. That prejudicial material was permitted at trial and was used to cause convictions; therefore, petitioners should be declared innocent.

H. That because "Double Jeopardy"

was truly involved since petitioners were charged, tried and convicted (with great publicity) on both "Involuntary Manslaughter" and "Reckless Homicide" for the same acts to the same person. Notwithstanding the fact that the petitioners were not sentenced for both should not be lost by this tribunal in its deliberations. That for this reason, the petitioners' convictions should be overturned.

I. That there was NO autopsy performed.

J. That the use of the word "Variance" by petitioners' counsel was not sufficient grounds to uphold their conviction.

3. That effective and desired alternative methods of health care be declared constitutional and outside the

scope of licensure because of their common law statutes.

4. That a person's right to freedom of choice in health care is encompassed in the "Free exercise of Religion" clause in the First Amendment to the Constitution of the United States and Article I of the Constitution of the State of Indiana.

5. That Honorable Robert Barnett's interpretation of involuntary manslaughter and reckless homicide be declared UNconstitutional.

6. That the petitioners be declared NOT GUILTY.

Further affiant sayeth not.

Respectfully submitted,

Harry Graham

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Incarceration Address
Indiana Department of
Corrections
Indiana State Farm
P. O. Box 76
Greencastle, Indiana 46135

State of Indiana, county of Putnam

I, the above signed petitioner, do attest and declare, under oath, that the above is true and correct according to the best of my knowledge and belief.

Affirmed and subscribed to before me this 27th day of May, 1986.

My commission expires 12-17-89

Daniel G. Johnson
Notary public

DANIEL G JOHNSON
NOTARY PUBLIC STATE OF INDIANA
PUTNAM CO.
MY COMMISSION EXP. DEC 17,1989
ISSUED THRU INDIANA NOTARY ASSOC.

Ellen Graham

Ellen Graham, pro se
Rural Route 1, Box 369
Alexandria, Indiana 46001
Telephone: 317-358-4069

I, the above signed petitioner, do attest and declare, under oath, that the above is true and correct to the best of my knowledge and belief.

Sworn and subscribed to before me this 27th day of May, 1986.

My commission expires MARCH 11, 1990

Thelma J. Wardlow

Notary public, THELMA J. WARDLOW

COUNTY OF RESIDENCE: HANCOCK